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TOM LYTGOE, CHAIR

CHUCK NOTBOHM

KEN WEBER

**PROCEEDING OF THE BOARD OF COMMISSIONERS  
COUNTY OF JEFFERSON, STATE OF MONTANA  
November 29, 2005**

**Present:** Commissioners Lythgoe and Notbohm; Matt Johnson, County Attorney; Harold Stepper, County Planner; Ben Sautter, Road Supervisor; Lonnie Whitakker, GIS/mapping tech; Mike Ruppert, Boyd Andrew; Hanice Copeland, Headwaters RC&D; Jan Anderson, *Boulder Monitor/Jefferson County Courier*; Bob and Florence Armagost, Ted Schuele, Paul and Shannon Smith, Layton Sysum, Joe Madsen, Greg Duncan

**Absent:** Commissioner Weber

**CALENDAR REVIEW**

12/3 Elkhorn Working Group - 3:00  
12/6 Montana City Trails meeting - 7:00  
12/7 MTAG - 5:00

**COMMISSION REPORTS**

**ROADLESS ISSUE**

Commissioner Lythgoe reported that he and Commissioner Notbohm met with the Governor the previous day to discuss the roadless issue. What the Governor wants to do is pretty narrowly defined. What he wants from the counties is locations for new roads and the costs involved. There was a lot of discussion on this and that this should be expanded to include other issues, but there is only one person to review all of the data, so the Governor is not willing to expand the parameters. Commissioner Lythgoe stated that he did tell the Governor that Jefferson County would honor his request and complete the task, but that we would include other issues too. Commissioner Notbohm noted that the Governor has extended the deadline to March. He understands where the Governor is coming from, with having limited abilities to deal with the information, but this doesn't deal with 90% of what the President requested.

**ELECTED OFFICIAL/DEPARTMENT HEAD CONCERNS**

**CORRESPONDENCE**

Loan documentation: Janice Copeland, with Headwaters RC&D, came before the Commission with paperwork to finalize a metal mines loan. The loan had already been approved, and just November 29, 2005 minutes.wpd

needed the Commission's signatures.

### **SUBDIVISION REVIEW**

#### **PRELIMINARY PLAT APPROVAL - BRET LAND MINOR SUBDIVISION**

Harold Stepper, County Planner, presented his staff report and recommended that preliminary plat approval be granted. Harold stated that there is a potential for a conflict of interest, so he has appointed himself to review the roads. Commissioner Notbohm moved to grant preliminary plat approval. Commissioner Lythgoe seconded. The motion carried.

#### **PRELIMINARY PLAT APPROVAL - SMITH/ROBBINS MINOR SUBDIVISION**

Harold presented his staff report and recommended that preliminary plat approval be granted. The intent of the subdivision is to sell off an existing house and use the remainder for agricultural land. Commissioner Notbohm moved to grant preliminary plat approval. Commissioner Lythgoe seconded. The motion carried.

#### **PRELIMINARY PLAT APPROVAL - MONARCH MOUNTAIN MINOR SUBDIVISION**

Harold presented his staff report and recommended that preliminary plat approval be granted. Commissioner Notbohm moved to grant preliminary plat approval. Commissioner Lythgoe seconded. The motion carried.

#### **PRELIMINARY PLAT APPROVAL - MAGGIE MINOR SUBDIVISION**

Harold presented his staff report and recommended that preliminary plat approval be granted. Commissioner Notbohm moved to grant preliminary plat approval. Commissioner Lythgoe seconded. The motion carried.

### **ITEMS FOR COMMISSIONERS ACTION OR REVIEW**

#### **RESOLUTION 35-2005 RESOLUTION OF INTENT**

Commissioner Lythgoe read the resolution as follows:

#### **RESOLUTION 35-2005**

#### **RESOLUTION OF INTENT TO SUPPORT OF BOYD ANDREW PROVIDING A RESIDENTIAL METHAMPHETAMINE TREATMENT PROGRAM IN BOULDER**

**WHEREAS**, the Jefferson County Commission pro-actively promotes increasing good employment opportunities that will help reduce the reliance on the employment in the natural resource industry; and

**WHEREAS,** Methamphetamine use and addiction is becoming an ever-increasing problem in society today. There are currently limited options available in Montana for individuals who need treatment for methamphetamine use and addiction. The establishment of a quality treatment program is needed that will assist individuals overcome addiction and allow them to once again be productive citizens.

**WHEREAS,** Jefferson County and the community of Boulder have had a long-standing successful relationship with human services businesses such as the Montana Developmental Center (MDT), Riverside Girls Correctional Center, and Alternative Youth Adventures (AYA). The area culture has demonstrated an acceptance and understanding of the unique requirements needed to successfully operate specialized human services programs.

**WHEREAS,** the Commission has a vested interest in the successful reutilization of the abandoned Boulder South Campus property for expanded economic development purposes. This property currently houses human services activities and has the capacity to add compatible similar type businesses. The continued development of this property will enhance the use of vacant land and buildings in the area while minimizing the potential for community blight; and

**WHEREAS,** the Commission has reviewed the Department of Corrections Request for Proposal (RFP) for a short-term methamphetamine treatment program; and

**WHEREAS,** Jefferson County and the community of Boulder have had a long-standing successful relationship with Boyd Andrew Community Services and the Commission is familiar with their proposal for a 60-bed, female, short-term methamphetamine treatment program; and

**WHEREAS,** the development of a methamphetamine treatment program at the Boulder South Campus provides an opportunity for Jefferson County to be a role model for similar type programs to be developed. This opportunity also has the potential to attract professional medical skills related to the treatment program that could allow for expanded medical and dental services in the area that would benefit all residents.

**NOW, THEREFORE, BE IT RESOLVED,** that the Jefferson County Commission supports the placement of the female methamphetamine treatment center in the vicinity of the Boulder Montana South Campus.

**BE IT FURTHER RESOLVED** that the Commission is willing to assist any interested party, who is submitting a proposal, with any necessary agency coordination or outside support that may be required.

**DATED**, this 29<sup>th</sup> day of November, 2005.

**ATTEST:**

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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**CHUCK NOTBOHM, COMMISSIONER**

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**KEN WEBER, COMMISSIONER**

Commissioner Lythgoe moved to adopt the resolution. Commissioner Notbohm seconded. Discuss followed. Mike Ruppert, CEO of Boyd Andrew, stated that they intend to build and operate a 60-bed facility, employing about 33 people. Commissioner Notbohm questioned having only 33 employees in a 60-bed facility. Mike stated that it exceeds the minimum requirement. Commissioner Notbohm asked about the salary range. Mike stated that entry-level security would start around \$9.50 to \$10.00/hr., professional staff at \$38,000, nursing staff, (RN) at \$45,000, and the director around \$60,000. Commissioner Notbohm agreed that it is important to see people earning close to a living wage. Jan Anderson asked why this is also on the next agenda. Commissioner Lythgoe stated that this is a resolution of intent, then they will consider a resolution. They want to give sufficient opportunity for the public to comment. The motion carried.

**RESOLUTION 36-2005 ESTABLISHING PRIORITY FOR DISPERSAL OF PUBLIC RECORDS**

Commissioner Lythgoe read the resolution as follows:

**RESOLUTION 36-2005**

**A RESOLUTION ESTABLISHING PRIORITY FOR DISPERSAL OF PUBLIC RECORDS TO COMPLY WITH MCA 2-6-405 ITEM 2 ( C)**

**WHEREAS**, the 2001 Legislature passed Senate Bill 443 henceforth codified a MCA 2-6-405 which went into effect October 1, 2001. This law requires local governments to give a 180-day notice before they may destroy any public record that is 10 years old or older. The notice is only required to be given to entities that have made it known they are interested in receiving the notice by subscribing to the Secretary of State List-serve; and

**WHEREAS**, during this 180-day period, groups may contact the local government and

make arrangements to transfer custody of the documents to a new organization. The bill further prioritizes the entities in order of consideration as: The Montana Historical Society/State Archives; Montana public and private universities and colleges; Local historical museums; Local historical societies; Montana genealogical groups; and the general public. If records are not claimed after 180 days, they may be destroyed; and

**WHEREAS**, the Local Government Records Advisory Committee as authorized by MCA 2-6-405 has established simple yet effective procedures for local governments to use when complying with MCA 2-6-405; and

**WHEREAS**, it is important that Jefferson County establish a priority for dispersal of public records in the event that more than one organization requests custody of the records slated for destruction that are older than 10 years old.

**NOW, THEREFORE, BE IT RESOLVED**, by the Jefferson County Commissioner that the following procedure is hereby established:

Section 1. In the event that more than one organization requests any public records of this organization slated for destruction, the decision will be based on the priority listed in MCA 2-6-405.

The priority list for Jefferson County shall be:

1. The Montana Historical Society/State Archives
2. Montana public and private universities and colleges
3. Local historical museums
4. Local historical societies
5. Montana genealogical groups
6. General public

Dispersal of any public records will follow the priority list above. Should more than one entity in the same category request the public records, then the public records shall be dispersed on a first-come, first-served basis.

Section 2. No decision will be made as to which entity may receive the public records until the 180 days has passed. Then and only then will the local government apply the dispersal criteria.

Section 3. As per item 3(b) of MCA 2-6-405, the entity requesting the records is required to pay all costs associated with the transfer.

Section 4. The records shall be transferred within the time frame agreed upon by the local government entity and the entity requesting the records. If the entity that requested the records does not remove the records within the agreed upon time frame, the records will be

offered to the next entity that showed an interest in them.

Section 5. If no one contacts the local government expressing an interest in the record within the 180 day period, the records will be destroyed.

**DATED** this 29<sup>th</sup> day of November, 2005.

**ATTEST:**

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**BONNIE RAMEY  
CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**CHUCK NOTBOHM, COMMISSIONER**

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**KEN WEBER, COMMISSIONER**

Commissioner Lythgoe moved to adopt the resolution. Commissioner Notbohm seconded. The motion carried.

**DISCUSS OWNERSHIP OF UPPER JACKSON CREEK ROAD**

Commissioner Lythgoe stated that this is the third opportunity for interested parties to comment. He stated that the Commission's position at this time is that the county road goes up to Dr. Mousa's entrance to his property. This is the result of several things, historical facts on file in the Clerk and Recorder's office as well as historical use and maintenance. It was determined in 2002 that the County did have an easement up to the old Armagost place and that the county road does not go beyond that.

Bob Armagost stated that he owned the property for 45 years. His main concern is sentimentality and wanting to see the right thing done. In 1960, the road was impassable. When they made the decision to build up there in 1961, he called the Commission for help. They researched and told him that the county road only went to his property line. The County fixed the road to that point. Some time later, the road was in need of repair. He contacted the Commission again, and was again told that the county road only went to his property line. It was decided at that point that he would maintain the road down to where Shane Schmaus now lives. Bob stated that an article in the November 11<sup>th</sup> edition of the *Jefferson County Courier* references a culvert that was installed by the County. He feels that this was a good ol' boy deal. He told the purchaser of his property that this is a private road, but that Mr. Schuele has access to his property. He noted that he was also told by Ben Sautter before he sold his property that the county road just went to his property line.

Mr. Schuele spoke of his historical access and past conversations he has had regarding the road.

Commissioner Lythgoe stated that he hasn't heard or seen anything that would change the Commission's position of where the road lies. There is some evidence that it was a county road at one time and abandoned. Mr. Armagost stated that at one time, he received a two-acre tax credit for a county road through his property, but that was on the Little Buffalo side, not the Jackson Creek side. Mr. Schuele stated that there used to be a toll road on Little Buffalo that people used to get to Helena. Commissioner Notbohm asked if the road going through his property comes out at Little Buffalo. Mr. Armagost stated that it would; however, now it is fenced and has a locked gate. Commissioner Lythgoe asked Mr. Schuele if he maintains that the spur road to his place is a county road. Mr. Schuele stated that this is correct. Mr. Armagost stated that if this is the case, then the road through Mr. Schuele's property over to Little Buffalo is a county road. Mr. Schuele stated that it was a county road at one time, before it was abandoned in the 1940s.

Commissioner Lythgoe stated that Mr. Armagost and Mr. Schuele have a lot of history on the area, and asked them if they agree that this is a county road to the property line. They both agreed that it is. He then asked if the county road extends to Mr. Schuele's property. Mr. Schuele stated that if not, it implies that the Armagost property was the final destination of both roads, and neither going through, and he finds that hard to believe. Commissioner Notbohm asked if he is able to use Little Buffalo Road. Mr. Schuele stated that he cannot, as it is fenced off. Commissioner Notbohm if this was a petitioned closure. Mr. Schuele stated that it was petitioned for closure and was closed between Jackson Creek and Little Buffalo Roads. Commissioner Notbohm asked if it was their opinion that this is where the county road ends. Mr. Armagost stated that this is his opinion, based on what he was told by two Commissioners and the Road Foreman, and this is what he told the purchaser of his property. Mr. Notbohm directed the same question to Mr. Schuele. Mr. Schuele referred to a 1978 Forest Service study. Commissioner Lythgoe asked Mr. Schuele if he is saying that the study agrees with him, that this is a county road. Mr. Schuele stated that it seems plain to him that the county road ends at his property. It doesn't make sense to have two roads go to a parcel of land and not meet. Commissioner Notbohm asked how far it is between the Schuele and Armagost property. A map was reviewed, and it was found to be just over a quarter mile.

Mr. Schuele stated that Montana law stated that a road can't be abandoned that provides access to public lands. Through the years, a number of people have crossed his property to access public land. If this road is abandoned, it will be cutting off access.

Greg Duncan stated that he is here on behalf of Dr. Mousa and Mark Krpan. The concern of his clients is that they don't want a superhighway through there and a subdivision. He stated that he has done some research, and a 1967 Supreme Court case stated that even if a road is declared a public right-of-way, it is limited to the historic use. He doesn't feel that his clients will have to worry about a 60-foot right-of-way, if the road is kept at its historic use. He also stated that it is his understanding that when a road is abandoned, the land reverts to the adjoining landowners, who can use the road if they need access.

Commissioner Notbohm stated that, in his opinion, he feels that regardless of where the gates are, they as a Commission need to know where the county road ends.

Commissioner Lythgoe asked Greg if there is a difference legally, from his perspective, if this is a county road versus a prescriptive right to access the property. Greg stated that if this was in Lewis and Clark County, there would be no difference at all, as there is no way to get a subdivision approved without a 60-foot easement. If this is deemed not to be a county road, it will give Dr. Mousa some room to negotiate with the landowners. If they are going to assume that there is a prescriptive access, they should keep it on the historic surface.

Mr. Armagost stated that he talked to Dr. Mousa the previous day, and he has no intention to deny Mr. Schuele access to his property. Mr. Schuele stated that he has already denied access, and that is why this meeting is happening. Commissioner Lythgoe agreed that the gate was locked, but it is open now. The locked gate was a mistake, and the doctor knows it was a mistake. He asked Mr. Schuele if he is okay with a prescriptive easement. Mr. Schuele stated that he would object to a prescriptive right. Greg stated that it is his understanding that what Mr. Armagost said is true; the doctor has no intention of denying access.

Matt stated that on the issue of prescriptive rights, there was a lot of work done leading up to the 2002 resolution. If the Commission decides to go with a prescriptive easement, they will be bound by historical use. They also need to consider the historical use. This could impact future subdivisions.

Commissioner Lythgoe stated that if they make the decision that it is a county road between the Armagost and Schuele property, historic use needs to be considered. He asked if this would change anything. Matt stated that at this point, it can only be an easement. There is no documentation for ownership, or even for an easement. Matt stated that he is definitely comfortable with the 2002 resolution. From the testimony of Mr. Armagost, Mr. Schuele has an easement, there is just nothing in writing.

Commissioner Lythgoe asked how they should deal with this. They can leave the 2002 resolution as it is, but the County took on Jackson Creek Road based on historic information, with no written documentation. Now they are hearing that more of the road is allegedly a county road. Matt stated that he believes that Mr. Schuele can acquire an easement to access his property. However, if a decision is made to develop a subdivision, it would have to be a court decision, as it is not in the original agreement.

Lonnie stated that the County has several roads that have existed forever that wander into forest lands. They aren't 60 feet and they'll never be 60 feet. They were meant to get from point A to point B, and he doesn't feel that current standards can be imposed on these roads. The county does have a responsibility to maintain these roads, but a 60-foot easement is not necessary. Commissioner Lythgoe asked Lonnie his opinion of the section of road between the Armagost and Schuele property, and on to the Forest Service. Lonnie stated that it appears that there was a section of Little Buffalo went to the Forest Service lands, but has since been obliterated by the Forest Service.

#### DISCUSS AND DECIDE ON FRONTING MONEY FOR ROAD WORK TO THE SOUTH HILLS DRIVE RMD

Commissioner Lythgoe stated that he would like to table this item, as he and Commissioner  
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Notbohm will probably cancel each other's vote. Commissioner Notbohm stated that he would like to discuss it briefly. He might not be at the next meeting, and questioned if they should put it off for two weeks. Commissioner Lythgoe stated that they are never going to get the road fixed. He asked if Commissioner Notbohm has read an e-mail that Bonnie had sent. She can send out a special assessment, and the County would have the money back by the end of the fiscal year.

Commissioner Lythgoe moved to loan the money to the South Hills Drive RMD and that the Commission instruct Bonnie to send out supplemental bills to the members of the RMD, and by doing so would precipitate the loan being paid by the end of the fiscal year. Commissioner Notbohm seconded. The motion carried.

Commissioner Notbohm noted that Dr. Kehr had sent a letter to the Commission, which he wanted read into the minutes. Commissioner Lythgoe read the letter (attached) and stated that he thinks Bonnie's proposal is more appropriate, and he doesn't feel that Dr. Kehr will have a problem with this.

## **MEETING ADJOURNED**

### **ATTEST:**

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**BONNIE RAMEY**  
**CLERK AND RECORDER**

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**TOMAS E. LYTHGOE, CHAIR**

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**CHUCK NOTBOHM, COMMISSIONER**

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**KEN WEBER, COMMISSIONER**